IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3302 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ORIENTAL INSURANCE CO. LTD. - Appellant(s)
Versus
DAVUBEN MADHABHAI & 3 - Defendant(s)

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Appearance :
MS MEGHA JANI for Appellant(s) : 1,
MR NIRZAR S DESAI for Defendant(s) : 1 - 2.
SERVED BY AFFIX.(N) for Defendant(s) : 3,
NOTICE UNSERVED for Defendant(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 17/11/2006
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

This appeal has been filed by the Oriental Insurance Co. Ltd. challenging the judgment and award dated 22.3.2001 passed by the Motor Accident Claims Tribunal (Aux.), Bhavnagar in Claim Petition No. 300 of 1997.

2. By the impugned judgment and award, the Claims Tribunal was pleased to grant compensation to the extent of Rs.2,97,500/- together with interest at the rate of 12% per annum in favour of the original claimants. The said order was passed in exercise of the powers under Section 163A of the Motor Vehicles Act, 1988 (hereinafter referred to as “the said Act”).

3. The appellant challenges the said award on two grounds. Firstly, it is contended that the Tribunal erred in awarding compensation to the tune of Rs.2,97,500/- in the facts of the case. The second grievance made by the appellant – Insurance Company before this Court is that despite the Claims Tribunal having passed final award under Section 163A of the said Act, the claim petition filed by the claimants under Section 166 of the said Act is still outstanding and kept pending. It is pointed out that the Tribunal passed the oder below Exh.20 in the pending claim petition and till date the main claim petition is not finally disposed of. It is contended that once when the Tribunal has exercised powers under Section 163A of the said Act and passed award

in favour of the claimants, thereafter there is no further scope of entertaining any application at the instance of the claimants under Section 166 of the said Act.

4. At the outset, we may note that learned advocate Shri Nirzar Desai appearing for respondent Nos.1 and 2 herein (original claimants) under instructions stated that the claimants would not press further the pending claim petition under Section 166 of the said Act. In view of this statement, one of the grievances of the appellant – Insurance Company would not survive. It is, therefore, provided that the impugned award of compensation passed by the Claims Tribunal would be treated as a final award in favour of the claimants and the claimants would not be entitled to press for any further claim for compensation.

5. With respect to the legality of the impugned award, we find that the accident had taken place on 12.2.1997. One Babubhai was travelling in a truck which met with an accident with another truck bearing registration No. UP-14-1244. When both the trucks collided, the same caused serious injuries to Babubhai who expired on account of such injuries. The widow of deceased Babubhai and his mother, therefore, filed the above mentioned claim petition before the Tribunal. The Tribunal was pleased to come to the conclusion that Babubhai was aged about 21 years on the date of the accident. The Tribunal,

therefore, following Schedule II to the said Act adopted the multiplier of 18 for assessing compensation. The Tribunal also found that deceased Babubhai was doing the work of polishing diamonds and was earning about Rs.2000/- per month. Consequently, the Tribunal applying the structured formula provided for in the Act assessed dependency benefit to be awarded to the claimants at Rs.2,88,000/-. Conventional figures of Rs.2000/- for funeral expenses, Rs.2500/- for loss of estate and Rs.5000/- for loss of consortium were added to the said figure. The Tribunal, therefore, passed award of Rs.2,90,500/- in favour of the claimants.

6. Having heard the learned advocates for the parties and having gone through the decision under challenge, we find no reason to interfere. With respect to the age and earning capacity of the deceased, there is hardly any debate possible. Once these factors are established, the Tribunal only applied the structured formula and computed the compensation payable to the claimants. We find no reason to interfere with the compensation awarded by the Tribunal.

7. Subject to the above clarification, the appeal is dismissed.

8. Learned advocate Shri Nirzar Deasi for the claimants made a grievance that the appellant – Insurance Company has not deposited the entire amount

as awarded by the Claims Tribunal. If that is so, it will be open to the claimants to point out the same to the Tribunal which, we are sure, will look into the grievance of the claimants.

[M.S. SHAH, J.]

[AKIL KURESHI, J.]

sundar/-